Wiesław Juchacz[1]

https://orcid.org/0000-0001-7240-6294

Gloss to the verdict of the Supreme Court on 4 April 2018, V KK 112/18, which stated that if the potential perpetrator has a strong alibi, he cannot be convicted[2]

Glosa do wyroku Sądu Najwyższego 4 kwietnia 2018 r., V KK 112/18, w którym stwierdzono, że jeśli potencjalny sprawca ma mocne alibi, to nie można go skazać

DOI: 10.5604/01.3001.0013.0378

The verdict under consideration relates to the case heard by the Supreme Court as a result of a cassation filed by the Prosecutor-General - the Minister of Justice against a prescriptive order issued by the District Court in S. on December 3, 2015.

The district court, in the issued order warrant, found the accused person guilty of theft of cosmetics worth about PLN 25 (Article 119 § 1 of the Code of Offences (CO)). The court adjudicated a one-month limitation of liberty with the obligation to provide unpaid, controlled work for social purposes of 40 hours. Due to the fact that the ruling was not appealed against, there was no appeal proceedings - the judgment thus became legally valid.

The appellant for the cassation claimed that, in his opinion, there were no grounds for issuing a verdict in the pre-trial proceedings, since the circumstances of committing the act and the guilt of the accused were questionable. He stressed that the convict on the date of the act served a penalty of deprivation of liberty. There were doubts as to whether he was the perpetrator of the theft. Consequently, in his view, in the light of the above-mentioned doubts, the district court should not have issued a prescriptive judgment.

Due to the fact that the verdict was made during prescriptive proceedings before making any considerations, it should be clearly stated that the decision may be issued only in a situation where the evidence is so clear that it does not raise any

[1] Dr Wiesław Juchacz - resigned Judge of the District Court in Bydgoszcz.

[2] LEX No 2470341.

significant doubts as to the fault and circumstances of committing the alleged act[3]. The lack of these doubts is to arise from the evidence enclosed with the application for punishment, which is recognized by the court as disclosed. As a result, the court must base its conviction on the factual findings based on this evidence and assessed in accordance with the principle of their free assessment[4]. The absence of the indicated doubts means that they do not exist both in regard to the agency of the act and the guilt of the accused, taking into account his explanations and other evidence carried out in the course of inquiry[5]. The fact that such doubts are present may attest the lack of evidence of the act of which the defendant is accused, the content of inquiry carried out, indicating the inevitability of court proceedings to verify the accuracy of the application for punishment through direct contact with evidence, or the need to check the conflicting versions of events that emerge from the evidence[6].

Since, according to art. 8 CO, in the proceedings regulated in this code, the provisions of art. 2, 4, 5 and 7 of the Code of Criminal Procedure are applied, it is obvious that the basis of the decision must be correct factual findings, and all unexplained circumstances must be interpreted in favor of the accused. Real factual findings are understood as findings which have been proved, which takes place when, in the light of the evidence examined, the opposite of the argued is impossible or highly improbable[7]. The evidence gathered must also simply convince each observer and the assessment body, fully and absolutely, of the truth of the findings[8].

In the case in question, it was considered that the removal of the application for guilt of the accused was motivated by the fact that he was recognized by the witness of the incident and that he himself, being listened to as a person to whom the application for a punishment was addressed, confessed to committing the act he was charged with.

It should be noted that the accused has the right to provide explanations in which he could present the circumstances of the incident. However, as per art. 20 § 3 of the Code of Conduct in Offense Cases, art. 175 of the Code of Criminal Procedure is being applied, according to which he has the right to submit explanations; however, he can, without giving reasons, refuse to answer individual questions, or refuse to give explanations, or to not submit them.

The assessment of this proof must take into account first of all the role it has in the process, with the entitlements arising from his defense rights[9]. Confession is only a kind of explanation and can be complete, when it concerns all the subjective and objective elements of the act, and partial, when it concerns selected fragments.

---

[3] See. e.g. the Supreme Court's judgment of 13 September 2017, IV KK 42/17, LEX No. 2365176.

[4] K. Eichstaedt, *Kodeks postępowania karnego. Komentarz* [Code of Criminal Procedure. Commentary], Vol. II, Warsaw 2015, p. 360.

[5] Judgment of the Supreme Court of July 21, 2011, III KK 144/11, LEX No. 860609.

[6] K. Dąbkiewicz, *Kodeks postępowania w sprawach o wykroczenia. Komentarz* [Code of conduct in offense cases. Commentary], 2nd edition, WKP 2017, LEX.

[7] See. the judgment of the Gdańsk Court of Appeal of 30 December 2010, II AKa 280/10, KZS 2011, No. 9, item 86.

[8] J. Kosonoga, [in:] *Kodeks postepowania karnego. Tom I, Komentarz do art. 1 – 166* [Code of Criminal Procedure. Volume I, Commentary to art. 1 – 166], Warsaw 2017, p. 72.

[9] D. Gruszecka, [in:] *Kodeks postępowania karnego. Komentarz* [Code of Criminal Procedure. Commentary], Warsaw 2015, p. 406.

Due to the failure to observe the principle of confessio est regina probationum, proof of the accused person's explanation, and thus the confession, is subject to evaluation in accordance with the principle of free evaluation of evidence[10].

It may even happen that the accused, by submitting an explanation in which he will admit to committing the act he is charged with, will deliberately accuse himself. Self-accusation - which cannot be excluded, could be an adopted form of defense. You can speak about false self-accusation in two senses. The first - sensu stricto, in which it is assumed that it means making a statement about committing a crime, which the law enforcement authorities did not know or had information about the incident, but did not associate it with that person or did not have sufficient grounds to take prosecution against it, and the second - sensu largo, in which it means any evidence against oneself, which would directly or indirectly indicate the commission of a crime[11]. It is obvious that such explanations must be thoroughly analyzed.

In the case in question, when the court possessed the information, that before the date of the offense, the accused had served a punishment of imprisonment, it was an indispensable necessity to check where he was at the time when the offense he was charged with was committed. As it later turned out, on the basis of information obtained from the prison service, the accused, on the day when the offense was committed, was transported from the penitentiary in G to the Custody in B. He could not commit the offense he was charged with, because he had no opportunity to be on the scene at the time when it took place.

In spite of having such a message, no action was taken to verify that the offender was actually detained at the date of the offense.

Therefore, it was the duty of the court in this situation to simply check if he had an alibi.

In the doctrine and jurisprudence it is assumed that an alibi can be defined as the circumstance of the accused to be outside the place of commission of the act in the time of its execution - alibi sensu stricto. Alibi may also mean the occurrence of such circumstances that would make it impossible (if they did) to commit this act, despite the presence on the spot of its commission - alibi sensu largo. There is no reason to depart from the Latin phrase "elsewhere" as defining this institution. Such a definition allows, on the basis of two elements - time and place, to say whether or not the person does or does not have an alibi. In order to have it, it is enough to show that one was not in the place where the act was committed at the time of its execution[12]. It is not important on what basis this circumstance will be found. However, it should not be forgotten that it is the authorities' that conduct the proceedings responsibility,

---

[10] Ibidem p. 406; K. Dudka, [in:] *Postępowanie karne* [Criminal Proceedings], Warsaw 2016, p. 288.

[11] W. Daszkiewicz, *Samooskarżenie a prawo do milczenia* [Self-accusation and the right to silence], "P i P" 1974, No 2, p. 2.

[12] See M. Cieślak, *Zagadnienia dowodowe w procesie karnym* [Evidence issues in a criminal trial], Warsaw 1955, p. 147; T. Tomaszewski, *Alibi a ciężar dowodu* [Alibi and the burden of proof], „PS" 1992, No 11-12, p. 35; T. Tomaszewski, *Alibi. Problematyka kryminalistyczn*a [Alibi. Forensic issues], Warsaw 1993, p. 5 – 11; J. Widacki, [in:] *Kryminalistyka* [Forensic Science], Warsaw 1999, p. 58; Z. Czeczot, T. Tomaszewski, *Kryminalistyka ogólna* [general Forensic Science], Toruń 1996, p. 145 – 150; A. Gaberle, *Dowody w sądowym procesie karnym. Teoria i praktyka* [Evidence in a court criminal trial. Theory and practice], Warsawa 2010, p. 51.

also in cases concerning offenses, to examine and take into account the circumstances in favor as well as to the detriment of the accused.

It can be concluded that the case concerned here points to a flagrant error that occurred during the evidentiary proceedings. Not checking alibi or all possible versions of the course of the event can easily lead to a judicial mistake. In a situation as obvious as the case in question - having information that the accused was in prison -, there shouldn't have been an error in the scope of the factual findings, and the message should've been checked. The trial body can always examine evidence ex officio when the correctness of the settlement depends on it. It becomes its duty when the necessity to make significant arrangements that are relevant to the decision regarding the guilt and legal qualification arise[13].

It is necessary to agree fully with the thesis contained in this ruling. In every proceeding, also in cases concerning offenses, all procedural rules guaranteeing its reliability must be implemented.

Bibliography

- Cieślak M., *Zagadnienia dowodowe w procesie karnym* [Evidence issues in a criminal trial],Warsaw 1955.
- Czeczot Z., T. Tomaszewski, *Kryminalistyka ogólna* [general Forensic Science], Toruń 1996.
- Daszkiewicz W., *Samooskarżenie a prawo do milczenia* [Self-accusation and the right to silence], "P i P" 1974, No 2.
- Dąbkiewicz K., *Kodeks postępowania w sprawach o wykroczenia*. Komentarz [Code of conduct in offense cases. Commentary], 2nd edition, WKP 2017, LEX.
- Dudka K., [in:] Postępowanie karne [Criminal Proceedings], Warsaw 2016.
- Eichstaedt K., *Kodeks postępowania karnego. Komentarz* [Code of Criminal Procedure. Commentary], Vol. II, Warsaw 2015.
- Gaberle A., *Dowody w sądowym procesie karnym. Teoria i praktyka* [Evidence in a court criminal trial. Theory and practice], Warsawa 2010.
- Gruszecka D., [in:] Kodeks postępowania karnego. Komentarz [Code of Criminal Procedure. Commentary], Warsaw 2015.
- Judgment of the Supreme Court of July 21, 2011, III KK 144/11, LEX No. 860609.
- Kosonoga J., [in:] Kodeks postępowania karnego. Tom I, Komentarz do art. 1 – 166 [Code of Criminal Procedure. Volume I, Commentary to art. 1 – 166], Warsaw 2017.
- Supreme Court's judgment of 13 September 2017, IV KK 42/17, LEX No. 2365176.
- Tomaszewski T., *Alibi a ciężar dowodu* [Alibi and the burden of proof], „PS" 1992, No 11-12.
- Widacki J., [in:] Kryminalistyka [Forensic Science], Warsaw 1999.

[13] See. e.g. the judgment of the Supreme Court of 7 June 1974, V KRN 43/74, OSNKW 1974, No. 11, pos. 212.